IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.8 OF 2005

L. and T. Finance Ltd. ... Petitioners

v/s

Mr K.G. Harish and others ... Respondents

Ms Shakuntala Joshi for Petitioners.

None for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 22ND FEBRUARY 2005

P.C.: -

1. This is a petition filed under section 9 of the Arbitration and Conciliation Act 1996. Admittedly, the arbitration clause has been invoked. The Arbitral Tribunal is already in place. In the petition, no explanation is given why the petitioners cannot approach the Arbitrator for the same reliefs which are sought in this petition. Reliance is placed on two judgments of the Supreme Court, one in the case of Sundaram Finance Ltd. v/s NEPC India Ltd., reported in (1999) 2 SCC 479 and another in the case of Firm Ashok Traders and another v/s Gurumukh Das Saluja and others, reported in (2004) 3 SCC 155 to say that an application under section 9 of the Act is maintainable even when the Arbitral Tribunal is in place. There is no doubt about the maintainability of the application under section 9 of the Act during the pendency of the Arbitral Tribunal proceedings, the question is of granting interim measure under section 9 in favour of the party which is in the discretion of the Court. As section 17 of the Act has conferred powers on the Arbitral Tribunal to grant interim relief, the Court would be justified in asking the petitioner who approaches the Court under section 9 of the Act as to why for grant of interim relief, the

party has chosen to approach the Court and it is for the party to satisfy the Court that it is justified in approaching the Court when the remedy to approach the Arbitrator for the same reliefs is available and therefore, there is an obligation on the petitioners to disclose the reason in the petition why the petitioner is justified in approaching Court under section 9 of the Act without approaching Arbitrator for the same reliefs by making an application under section 17 of the Act. The relief which can be granted by the Court under section 9 of the Act including appointment of Receiver, can be granted by the Arbitrator. In this situation, in my opinion, as the Arbitrator is ceased of the matter and also has power to grant interim reliefs, it will not be appropriate for the Court to pass interim measures in favour of the party who has chosen not to approach Arbitrator for the interim reliefs and has also chosen not to disclose reasons in the petition for approaching the Court and not the Arbitrator. The petition is therefore disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.